



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

DCP/LHE/NMA  
F. #2016R00505

*271 Cadman Plaza East  
Brooklyn, New York 11201*

July 23, 2022

By ECF

The Honorable Brian M. Cogan  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v. Daniel Small  
Criminal Docket No. 16-640 (BMC)

Dear Judge Cogan:

The government respectfully submits this letter in response to the defendant's letter dated July 23, 2022, which was emailed to Chambers, in order to clarify its position and advise the Court of the current status of witnesses and the logistical issues should the Court adjourn openings to August 3, 2022 as the defendant requests.

On January 19, 2022, the Court issued an order granting the defendant's request for an adjournment of trial, which stated "jury selection is adjourned to 7/27/2022 before a magistrate judge with trial to commence before Judge Cogan in courtroom 8D South once jury selection is completed." Dkt Entry dated January 19, 2022. Immediately thereafter, the government notified its potential witnesses of the adjournment of trial and the new schedule. Given the length of time that jury selection has taken since the onset of the COVID-19 pandemic, the government has assumed that it would likely take three full days to pick a jury and that openings would likely commence sometime on August 1, 2022, and has been planning accordingly, including in its submissions to the Court. See Dkt. Entry 897 (submitting a proposed pre-trial briefing schedule). Of course, the government would not presume to alter the schedule set by the Court and if jury selection proceeds faster than anticipated, the government will be ready to deliver its opening statement and call witnesses.

The government respectfully submits that adjourning opening statements to August 3, 2022 is both unnecessary and would likely result in a lengthier adjournment. Based on the schedule they have had since January 2022, two of the government's important witnesses have made travel arrangements, including for international travel, that require them to be out of the

Eastern District of New York by August 4, 2022.<sup>1</sup> The government has planned accordingly to ensure both witnesses' testimony will be completed before then, however, adjourning the trial would render them both unavailable.

Moreover, the government respectfully submits that the addition of three witnesses to the government's witness list do not necessitate an adjournment to August 3, 2022. The government and defense counsel have discussed possible solutions to avoid calling both custodial witnesses and Samuel Adler, who would be briefly testifying akin to a custodial witness. The government no longer anticipates calling Alexis Northwood, but included her as a possible witness given the Court's deadline to provide a final witness list by July 20, 2022. As a result, the only new substantive witness the government anticipates calling is Jed Latkin. As the government has noted, defense counsel has had the majority of Mr. Latkin's Jencks Act material for nearly four years and the government recently provided new Jencks Act material from this week. The government does not anticipate providing any additional Rule 16 material for Mr. Latkin, but will of course continue, pursuant to its obligations, to immediately provide Jencks Act materials or any Brady materials, should the government obtain any further materials. Moreover, the notion that Mr. Latkin's testimony raises additional concerns for the defendant is diminished by the fact that Mr. Latkin was noticed in January 2019 as a witness in the prior trial, of which the defendant was scheduled to take part until the last minute, and the defendant did not raise any concerns prior to that trial. To the extent the Court believes the defendant needs additional time to process information for Mr. Latkin, most of which it has had for years, the government believes the Court's order directing the government to call Mr. Latkin in the second half of its case-in-chief provides ample time for the defendant to prepare for that testimony.

Accordingly, the government respectfully submits that openings should commence upon the completion of jury selection, most likely on or before August 1, 2022.

Respectfully submitted,

BREON PEACE  
United States Attorney

By: /s/  
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cc: Clerk of the Court (BMC) (by ECF)  
Defense counsel (by ECF)

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<sup>1</sup> Both of these witnesses were on the government's original witness list that was supplied to the defense in January 2022.